

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PERCY LAVAE BACON,

Plaintiff,

vs.

JAMES COX, *et al.*,

Defendants.

2:11-cv-00249-KJD-PAL

ORDER

Plaintiff is a prisoner proceeding *pro se* and has submitted an incomplete application to proceed *in forma pauperis* (docket #1) as well as a motion for temporary restraining order and preliminary injunctive relief (docket #s 2, 3). Such documents are insufficient to initiate a civil rights action in this court. Moreover, on at least three (3) occasions, the court has dismissed civil actions commenced by plaintiff while in detention for failure to state a claim for which relief may be granted.¹

Under 28 U.S.C. § 1915(g), “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that

¹ See *Bacon v. Webster, et al.*, 2:05-cv-01267-PMP-GWF; *Bacon v. Laswell*, 2:09-cv-02058-PMP-PAL; *Bacon v. State of Nevada*, 2:10-cv-01451-KJD-LRL. The court takes judicial notice of its prior records in the above matters.

1 was dismissed on the grounds that is frivolous, malicious, or fails to state a claim upon which relief may
2 be granted,” he may not proceed *in forma pauperis* and instead must pay the full \$350.00 filing fee in
3 advance, unless he is under imminent danger of serious physical injury. “Section 1915(g)’s cap on prior
4 dismissed claims applies to claims dismissed both before and after the statute’s effective date” of April
5 26, 1996. *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

6 Plaintiff cannot proceed *in forma pauperis* in this action or any other civil action filed
7 in any federal court because he has had three (3) or more prior actions dismissed for failure to state a
8 claim upon which relief may be granted, or as frivolous or malicious. Plaintiff has not alleged, and the
9 subject matter of this action does not indicate, that he is in imminent danger of serious physical injury.
10 He must pre-pay the filing fee in full.

11 **IT IS THEREFORE ORDERED** that plaintiff’s application to proceed *in forma*
12 *pauperis* (docket #1) is **DENIED**.

13 **IT IS FURTHER ORDERED** that this action will be dismissed without prejudice unless
14 plaintiff pays the \$350.00 filing fee in full within and files a complaint on the court-approved form
15 within **thirty (30) days** of entry of this order.

16 **IT IS FURTHER ORDERED** that the following motions filed by plaintiff: motion for
17 preliminary injunction (docket #3); motion for recusal of district judge (docket #5); and motion to amend
18 judgment (docket #6) are all **DENIED**.

1 **IT IS FURTHER ORDERED** that the Clerk shall send to plaintiff a blank section 1983
2 civil rights complaint form with instructions. Plaintiff is expressly cautioned that failure to file a
3 complaint on the court-approved form, accompanied by the \$350.00 filing fee, within thirty (30) days
4 of the date of entry of this order may result in the immediate dismissal of this entire action without
5 prejudice.

6 DATED: March 9, 2011

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10 UNITED STATES DISTRICT JUDGE